IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 12962 of 2003

Between:

Smt. Koduru Kalpalatha, W/o. Meera Reddy,
Chairperson, Gudur Municipality, R/o. Narasingraopet,
Gudur, Nellore District.

..... PETITIONER

AND

1 The District Collector & Magistrate, Nellore.
2 The Revenue Divisional Officer,
Gudur, Nellore District.
3 The Commissioner, Gudur Municipality,
Gudur, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 1st respondent issued in Rc.No. D3/1736/2003 dated 12.4.2003 as illegal, arbitrary and without jurisdiction.

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR MUNCIPAL ADMINISTRATION & URBAN DEVELOPMENT

Counsel for the Respondent No.3: MR. D. SRINIVAS

The Court made the following:

ORDER:

The petitioner is the Chairperson of Gudur Municipality. Aggrieved by the Proceedings of the District Collector dated 12.4.2003 whereby and whereunder the District Collector suspended all resolutions passed by the Municipal Council on 29.3.2003 except resolution Nos.593, 595, 599, 600 to 604, 607, 609, 613 to 615, 616, 621 & 643. The District Collector passed the said proceedings purporting to be exercising power under Section 70 of A.P. Municipalities Act, 1965 (the Act, for brevity).

This Court while admitting the writ petition suspended the impugned order. The respondents have now come forward with an application being WVMP No.1466 of 2004 praying this Court to vacate the interim order.

The only submission made across the bar is that the District Collector has not sent any report to the Government as required under Section 70 (1) of the Act, and therefore, the order is unsustainable. A reading of Sections 59 (1) & 59 (2) of the Act would show that power to cancel/suspend the resolutions of the Municipal Council primarily inhere in the Government. When the execution of any resolution is likely to cause financial loss to the Municipality, danger to human life, health or safety or is likely to cause lead to a riot or breach of peace, the Government is also empowered to suspend the resolution pending action for cancellation of the resolution. Section 70 of the Act confers a limited power on the District Collector. It is to the effect that the District Collector may suspend any resolution of the Municipal Council if such case falls under Section 59 (1) (ii) (c) of the Act. After doing so, the District Collector has to send a report to the Government, who may thereupon either rescind or take further action under Section 59(1) of the Act.

When the matter was heard on 7.9.2004, it was not clear as to whether the District Collector has sent any report as required under Section 70 of the Act. Today, the learned Assistant Government Pleader for Municipal Administration on instructions submits that the Government has not received any report from the District Collector. This shows that *ex facie* the impugned order came to be passed in contravention of law. It is well settled that when the law requires a particular thing to be done in a particular manner, the same shall have to be done in such a

manner. The District Collector has not sent any report even after lapse of more than one-and-a-half year, and therefore, the impugned order cannot be sustained.

In the result, the writ petition is allowed and the impugned order is set aside observing that it shall be open to the Government to take appropriate action if any report is sent by the District Collector. No order as to costs.

September 21, 2004. **V.V.S. RAO, J**

YS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Twenty first day of Two thousand and four.

ASSISTANT REGISTRAR

To

1 The District Collector & Magistrate, Nellore.
2 The Revenue Divisional Officer,
Gudur, Nellore District.
3 The Commissioner, Gudur Municipality,
Gudur, Nellore District.
4 Two CCs to the Government Pleader for Municipal Adminsitration & Urban Development, High Court Buildings, Hyderabad (O.U.T)
5 Two C.D. copies.